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REPORT
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NORTH AMERICAN WETLANDS CONSERVATION ACT

OCTOBER 5, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 2587]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2587) to conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend upon such habitats, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "North American Wetlands Conservation Act".

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(A) FINDINGS.—The Congress finds and declares that—

(1) the maintenance of healthy populations of migratory birds in North America is dependent on the protection, restoration, and management of wetland ecosystems and other habitats in Canada, as well as in the United States and Mexico;

(2) wetland ecosystems provide essential and significant habitat for fish, shellfish, and other wildlife of commercial, recreational, scientific, and aesthetic value;

(3) almost 35 percent of all rate, threatened, and endangered species of animals are dependent on wetland ecosystems;

(4) wetland ecosystems provide substantial flood and storm control values and can obviate the need for expensive human-made control measures;

(5) wetland ecosystems make a significant contribution to water availability and quality, recharging around water, filtering surface runoff, and providing waste treatment;

(6) wetland ecosystems provide aquatic areas important for recreational and aesthetic purposes;

(7) more than 50 percent of the original wetlands in the United States alone have been lost;

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(8) wetlands destruction, loss of nesting cover, and degradation of migration and wintering habitat have contributed to long-term downward trends in populations of migratory bird species such as pintails, American bitterns, and black ducks;

(9) the migratory bird treaty obligations of the United States with Canada, Mexico, and other countries require protection of wetlands that are used by migratory birds for breeding, wintering, or migration and are needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(10) the 1988 amendments to the Fish and Wildlife Conservation Act of 1980 require the Secretary of the Interior to identify conservation measures to assure that nongame migratory bird species do not reach the point at which measures of the Endangered Species Act are necessary;

(11) protection of migratory birds and their habitats requires long-term planning and the close cooperation and coordination of management activities by Canada, Mexico, and the United States within the framework of the 1916 and 1936 Migratory Bird Conventions and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(12) the North American Waterfowl Management Plan, signed in 1986 by the Minister of Environment for Canada and the Secretary of the Interior for the United States, provides a framework for maintaining and restoring an adequate habitat base to ensure perpetuation of populations of North American waterfowl and other migratory bird species;

(13) a tripartite agreement signed in March 1988 by the Director General for Ecological Conservation of Natural Resources of Mexico, the Director of the Canadian Wildlife Service, and the Director of the United States Fish and Wildlife Service provides for expanded cooperative efforts in Mexico to conserve wetlands for migratory birds;

(14) the long-term conservation of migratory birds and habitat for these species will require the coordinated action of governments, private organizations, landowners, and other citizens; and

(15) the treaty obligations of the United States under the Convention on Wetlands of International Importance especially as Waterfowl Habitat requires promotion of conservation and wise use of wetlands.

(b) PURPOSE.—The purposes of this Act are to encourage partnership among public agencies and other interests—

(1) to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America;

(2) to maintain current or improved distributions of migratory bird populations; and

(3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties, conventions, and other agreements with Canada, Mexico, and other countries.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) The term "Council" means the North American Wetlands Conservation Council established by section 4(a).

(2) The term "Agreement" means the tripartite agreement signed in March 1988 between the Director General for Ecological Conservation of Natural Resources of Mexico, the Director of the Canadian Wildlife Service, and the Director of the United States Fish and Wildlife Service.

(3) The term "appropriate Committees" means the Committee on Appropriations and the Committee on Environment and Public Works of the United States Senate and the Committee on Appropriations and the Committee on Merchant Marine and Fisheries of the United States House of Representatives.

(4) The term "Migratory Bird Conservation Commission" means the commission established by section 2 of the Migratory Bird Conservation Act (16 U.S.C. 715a).

(5) The term "migratory birds" means all wild birds native to North America that are in an unconfined state and that are species protected under the Migratory Bird Treaty Act, including ducks, geese, and swans of the family Anatidae, species listed as threatened or endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.), or species defined as non-game under the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901-2912).

(6) The term "Plan" means the North American Waterfowl Management Plan signed by the Minister of the Environment for Canada and the Secretary of the Interior for the United States in May 1986.

(7) The term "Plan Committee" means the North American Waterfowl Management Plan Committee established by the Appendix to the Plan defined in paragraph 6 of this section.

(8) The term "Secretary" means the Secretary of the Interior.

(9) The term "State" means the State fish and wildlife agency which shall be construed to mean any department, or any division of any department of another name, of a State that is empowered under its laws to exercise the functions ordinarily exercised by a State fish and wildlife agency.

(10) The term "wetland conservation project" means—

(A) the obtaining of a real property interest in land or waters including water rights, if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon; or

(B) the restoration, management, or enhancement of wetlands ecosystems and other habitat for migratory birds and other fish and wildlife species if such restoration, management, or enhancement is conducted on lands and waters that are administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon; and

(C) in the case of projects undertaken in Mexico, includes technical training and development of infrastructure necessary for the conservation and management of wetlands and studies on the sustainable use of wetlands resources.

SEC. 4. ESTABLISHMENT OF NORTH AMERICAN WETLANDS CONSERVATION COUNCIL.

(a) COUNCIL MEMBERSHIP.—(1) There shall be established a North American Wetlands Conservation Council which shall consist of 10 members who may not receive compensation as members of the Council. Of the Council members—

(A) 6 shall be the members of the United States section of the North American Waterfowl Management Plan Committee as established in the Plan;

(B) 1 shall be the Secretary of the Board of the National Fish and Wildlife Foundation appointed pursuant to section 3(2)(B) of the National Fish and Wildlife and Wildlife Establishment Act (16 U.S.C. 3702); and

(C) 3 shall be individuals who shall be appointed by the Secretary and who shall each represent a different non-profit charitable organization which is actively participating in the carrying out of the wetlands conservation projects under this Act, the Plan, or the Agreement.

(2) The Secretary shall appoint an alternative member of the Council who shall be knowledgeable and experienced in matters relating to fish, wildlife, and wetlands conservation and who shall perform the duties of a Council member appointed under subsection (a)(1)(C) of this section—

(A) until a vacancy referred to in subsection (b)(3) of this section is filled; or

(B) in the absence of such a member from a meeting of the Council.

(b) APPOINTMENT AND TERMS.—(1) Except as provided in paragraph (2), the term of office of a member of the Council appointed under subsection (a)(1)(C) of this section is three years.

(2) Of the members first appointed under subsection (a)(1)(C) of this section after the date of enactment of this Act, one shall be appointed for a term of one year, one shall be appointed for a term of two years, and one shall be appointed for a term of three years.

(3) Whenever a vacancy occurs among members of the Council appointed under subsection (a)(1)(C) of this section, the Secretary shall appoint an individual in accordance with that subsection for the remainder of the applicable term.

(c) EX OFFICIO COUNCIL MEMBERS.—The Secretary is authorized and encouraged to include as ex officio nonvoting members of the Council representatives of—

(1) the Federal, provincial, territorial, or State government agencies of Canada and Mexico which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement;

(2) the Environmental Protection Agency and other appropriate Federal agencies, which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement; and

(3) non-profit charitable organizations and native American interests, including tribal organizations, which are participating actively in one or more wetlands conservation projects, under this Act, the Plan, or the Agreement.

(d) CHAIRMAN.—The Chairman shall be elected by the Council members for a three-year term, except that the first elected chairman may serve a term of less than three years.

(e) QUORUM.—A majority of the membership of the Council shall constitute a quorum for the transaction of business.

(f) MEETINGS.—The Council shall meet at the call of the Chairman at least once a year. Council meetings shall be open to the public. If a Council member appointed under subsection (a)(1)(C) of this section misses three consecutive regularly scheduled meetings, the Secretary may remove that individual in accordance with subsection (b)(3).

(g) COORDINATOR.—The Director of the United States Fish and Wildlife Service shall designate an employee of the Service—

(1) who shall be educated and experienced in the principles of fish, wildlife, and wetlands conservation;

(2) who shall be responsible, with assistance from the United States Fish and Wildlife Service, for the administration of this Act; and

(3) who shall be compensated with the funds available under section 8(a)(1) for administering this Act.

SEC. 5. APPROVAL OF WETLANDS CONSERVATION PROJECTS.

(a) CONSERVATION BY THE COUNCIL.—The Council shall recommend wetlands conservation projects to the Migratory Bird Conservation Commission based on consideration of—

(1) the extent to which the wetlands conservation project fulfills the purpose of this Act and the goals of the Plan or the Agreement;

(2) the availability of sufficient non-Federal moneys to carry out any wetlands conservation project and to match Federal contributions in accordance with the requirements of section 8(b) of this Act;

(3) the extent to which any wetlands conservation project represents a partnership among public agencies and private entities;

(4) the consistency of any wetlands conservation project in the United States with the National Wetlands Priority Conservation Plan developed under section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921);

(5) the extent to which any wetlands conservation project would aid the conservation of migratory nongame birds, other fish and wildlife, and species that are listed, or candidates to be listed, as threatened or endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.);

(6) the substantiality of the character and design of the wetlands conservation project; and

(7) the recommendations of any partnerships among public agencies and private entities in Canada, Mexico, or the United States which are participating actively in carrying out one of more wetlands conservation projects under this Act, the Plan, or the Agreement.

(b) RECOMMENDATIONS TO THE MIGRATORY BIRD CONSERVATION COMMISSION.—The Council shall submit to the Migratory Bird Conservation Commission and appropriate Committees by January 1 of each year, a description, including estimated costs, of the wetlands conservation projects which the Council has considered under subsection (a) of this section and which it recommends, in order of priority, that the Commission approve for Federal funding under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)) as amended by this Act.

(c) COUNCIL REPRESENTATION ON COMMISSION.—The Chairman of the Council shall select one Council member of United States citizenship to serve along with him as ex officio members of the Migratory Bird Conservation Commission for the purposes of considering and voting upon wetlands conservation projects recommended by the Council.

(d) CONSIDERATION OF RECOMMENDATIONS.—The Commission, along with the two members of the Council referred to in subsection (c), is authorized to consider and approve or reject any wetland conservation project recommended by the Council. If the Commission approves any wetland conservation project, Federal funding shall be made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act. If the Commission rejects any wetland conservation project recommended by the Council, the Commission shall provide the Council and the appropriate Committees with a written statement explaining its rationale for the rejection.

(e) COUNCIL PROCEDURES.—The Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section. The procedures shall include requirements that—

(1) a quorum of the Council must be present before any business may be transacted; and

(2) a recommendation referred to in subsection (b) of this section may be adopted only by the affirmative vote of at least two-thirds of all members present and voting.

SEC. 6. CONDITIONS RELATING TO WETLANDS CONSERVATION PROJECTS.

(a) PROJECTS IN THE UNITED STATES.—(1) Subject to the allocation requirements of section 8(a)(2) and the limitations on Federal contributions under section 8(b) of this Act, the Secretary shall assist in carrying out wetlands conservation projects in the United States, which have been approved by the Migratory Bird Conservation Commission with the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 16 U.S.C. 669b(b)), as amended by this Act.

(2) Except as provided in paragraph (3), any lands or waters or interests thereon acquired in whole or in part by the Secretary with the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 16 U.S.C. 669b(b)), as amended by this Act, to carry out wetlands conservation projects shall be included in the National Wildlife Refuge System.

(3) In lieu of including in the National Refuge System any lands or waters or interests therein acquired under this Act, the Secretary may, in concurrence with the Migratory Bird Conservation Commission, convey without cost to a state, or to another public agency or other entity, any real property interest acquired in whole or in part with the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 16 U.S.C. 669b(b)), as amended by this Act, upon a finding by the Secretary that the real property interests can be better managed if they are not retained in the National Wildlife Refuge System. Any real property interest conveyed pursuant to this paragraph shall be subject to such terms and conditions that will ensure that the interest will be administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon.

(b) PROJECTS IN CANADA OR MEXICO.—Subject to the allocation requirements of section 8(a)(1) and the limitations on Federal contributions under section 8(b) of this Act, the Secretary shall grant or otherwise provide the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act, to public agencies and other entities for the purpose of assisting them in carrying out wetlands conservation projects in Canada or Mexico that have been approved by the Migratory Bird Conservation Commission; provided, that the grant recipient shall have been identified in the project description accompanying the recommendation from the Council and approved by the Commission. The Secretary may only grant or otherwise provide Federal funds if the grant or provision is subject to terms and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such Federal funds will be administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon. Real property and interests in real property acquired pursuant to this subsection shall not become part of the National Wildlife Refuge System. Acquisitions of real property and interests in real property carried out pursuant to this subsection shall not be subject to any provision of Federal law governing acquisitions of property for inclusion in the National Wildlife Refuge System.

SEC. 7. AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) AID IN WILDLIFE RESTORATION.—(1) Section 3 of the Act of September 2, 1937 (16 U.S.C. 669b) is amended—

(A) by inserting "(a)" before "An amount" in the first sentence thereof; and

(B) by adding at the end thereof the following:

"(b)(1) The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the fund as is not, in the Secretary's judgment, required for meeting a current year's withdrawals. For purposes of such investment, the Secretary of the Treasury may—

"(A) acquire obligations at the issue price and purchase outstanding obligations at the market price; and

"(B) sell obligations held in the fund at the market price.

"(2) The interest on obligations held in the fund—

"(A) shall be credited to the fund;

"(B) constitute the sums available for allocation by the Secretary under section 8 of the North American Wetlands Conservation Act; and

"(C) shall become available for apportionment under this Act at the beginning of Fiscal Year 2006.".

(2) Section 4(a) of the Act of September 2, 1937 (16 U.S.C. 669c) is amended by inserting "(excluding interest accruing under section 3 (b))" after "revenues" in the first sentence thereof.

(3) The amendments made by this subsection of this Act take effect October 1, 1989.

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available under subsection (1) of this section, there are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 8 of the Act not to exceed $15,000,000 for each of fiscal years 1990, 1991, 1992, and 1993.

(c) AVAILABILITY OF FUNDS.—Sums made available under this section shall be available until expended.

SEC. 8. ALLOCATION OF AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) ALLOCATIONS.—Of the sums available to the Secretary for any fiscal year under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)) as amended by this Act, which can be matched with non-Federal moneys in accordance with the requirements of subsection (b), such amount considered necessary by the Secretary (but not more than 4 percent) is available to defray the costs of administering this Act during such fiscal year. Of the remaining funds—

(1) such percentage of that sum (but at least 40 percent and not more than 70 percent thereof) as is considered appropriate by the Migratory Bird Conservation Commission, shall be allocated by the Secretary to carry out approved wetlands conservation projects in Canada and Mexico in accordance with section 6(b) of this Act;

(2) the remainder of such sum after paragraph (1) is applied shall be allocated by the Secretary to carry out approved wetlands conservation projects in the United States in accordance with section 6 of this Act; and

(3) over a period of 5 years the average amount allocated to projects in Canada and Mexico pursuant to paragraph (1) shall be at least 50% of the total amount allocated pursuant to this subsection.

(b) FEDERAL CONTRIBUTION FOR PROJECTS.—The Federal moneys allocated under section (a) of this section for any fiscal year to carry out approved wetlands conservation projects shall be used for the payment of not to exceed 50 percent of the total U.S. contribution costs of such projects, or may be used for payment of 100 percent of the costs of such projects located on Federal lands and waters, including the acquisition of inholdings within such lands and waters. The non-Federal share of the United States contribution to the costs of such projects may not be derived from Federal grant programs.

(c) PARTIAL PAYMENTS.—(1) The Secretary may from time to time make payments to carry out approved wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (b) of this section.

(2) The Secretary may enter into agreements to make payments on an initial portion of an approved wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent allocations if and when they become available. The liability of the United States under such an agreement is contingent upon the continued availability of funds for the purposes of this Act.

SEC. 9. DEPOSIT OF LAW ENFORCEMENT PROCEEDS INTO FUND.

(a) IN GENERAL.—Except as provided in subsection (b), all amounts received by the United States in the form of fines, penalties, and proceeds of seizures and forfeitures resulting from law enforcement activities of the United States Fish and Wildlife Service shall be deposited into the separate fund provided for by section 401(a) of the Act of June 15, 1935 (commonly referred to as the "Refuge Revenue Sharing Act"; 16 U.S.C. 715s(a)) for use in accordance with that Act.

(b) EXCEPTION.—Subsection (a) shall not apply to—

(1) amounts used for paying rewards and costs of temporary care under section 11(d) of the Endangered Species Act of 1973 (16 U.S.C. 1540(d)); and

(2) amounts required by section 11(d) of the Endangered Species Act of 1973 (16 U.S.C. 1540 (d)) to be deposited into the cooperative endangered species conservation fund established by section 6(i) of that Act (16 U.S.C. 1535 (i)).

SEC. 10. RESTORATION, MANAGEMENT, AND PROTECTION OF WETLANDS AND HABITAT FOR MIGRATORY BIRDS ON FEDERAL LANDS.

The head of each Federal agency responsible for acquiring, managing, or disposing of Federal lands and waters shall, to the extent consistent with the mission of the agency and existing statutory authorities, cooperate with the Director of the United States Fish and Wildlife Service to restore, protect, and enhance the wetland ecosystems and other habitats for migratory birds, fish, and wildlife within those lands and waters. When considering land disposal alternatives, the head of the agency shall give priority to the transfer of real property interests for conservation purposes that would further the purposes of this Act and the goals of the Plan and the Agreement.

SEC. 11. REPORTS TO CONGRESS.

The Secretary shall report to the appropriate Committees of Congress on the implementation of this Act. The report shall include:

(a) a biennial assessment of—

(1) the estimated number of acres of wetlands and habitat for waterfowl and other migratory birds that were restored, protected, or enhanced during such two year period by Federal, State, and local agencies and other entities in the United States, Canada, and Mexico;

(2) trends in the population size and distribution of North American migratory birds; and

(3) the status of the efforts to establish agreements with nations in the western hemisphere pursuant to section 17.

(b) an annual assessment of the status of wetlands conservation projects, including an accounting of expenditures by Federal, State, and other United States entities, and expenditures by Canadian and Mexican sources to carry out these projects.

SEC. 12. REVISIONS TO THE PLAN.

The Secretary shall, in 1991 and at five-year intervals thereafter, undertake with the appropriate officials of Canada to revise the goals and other elements of the Plan in accordance with the information required under section 11 and with the other provisions of this Act. The Secretary shall invite appropriate officials of Mexico to participate in any revisions of the Plan made pursuant to this section.

SEC. 13. RELATIONSHIP TO OTHER AUTHORITIES.

(a) ACQUISITION OF LANDS AND WATERS.—Nothing in this Act affects, alters, or modifies the Secretary's authorities, responsibilities, obligations, or powers to acquire lands or waters or interests therein under any other statute.

(b) MITIGATION.—The Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act, may not be used for fish and wildlife mitigation purposes under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the Water Resources Development Act of 1986 (Public Law 99-662; 100 Stat. 4235).

SEC. 14. ADDITION OF EPA ADMINISTRATOR TO MIGRATORY BIRD CONSERVATION COMMISSION.

Section 2 of the Migratory Bird Conservation Act (16 U.S.C. 715a) is amended by striking "the Secretary of Transportation," and inserting in lieu thereof "the Administrator of the Environmental Protection Agency,".

SEC. 15. LIMITATION ON ASSESSMENTS AGAINST MIGRATORY BIRD CONSERVATION FUND.

Notwithstanding any other provision of law, only those personnel and administrative costs directly related to acquisition of real property shall be levied against the Migratory Bird Conservation Account.

SEC. 16. TECHNICAL AND CONFORMING AMENDMENTS TO THE MIGRATORY BIRD TREATY ACT.

Section 2 of the Migratory Bird Treaty Act (16 U.S.C. 703) is amended—

(1) by striking "and" after "1936,"; and

(2) by inserting after "1972" the following: "and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976."

SEC. 17. OTHER AGREEMENTS.

(a) The Secretary shall undertake with the appropriate officials of nations in the western hemisphere to establish agreements, modeled after the Plan or the Agreement, for the protection of migratory birds identified in section 13(a)(5) of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2912 (a)). When any such agreements are reached, the Secretary shall make recommendations to the appropriate Committees on legislation necessary to implement the agreements.

(b) Section 13(a) of the Fish and Wildlife Conservation Act (16 U.S.C. 2912(a)) is amended by: striking "and" after "U.S.C. 1531 to 1543);" and striking "necessary." and inserting "necessary; and" and adding at the end of the following:

"(5) identify lands and waters in the United States and other nations in the western hemisphere whose protection, management, or acquisition will foster the conservation of species, subspecies, and populations of migratory non-game birds, including those identified in paragraph (3)."

Purpose of the Legislation

The purpose of the legislation is to conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend on wetland habitats.

Background and Need

WETLANDS AND MIGRATORY BIRDS

Wetlands provide critical habitat for well over 100 species of migratory birds in North America, including 37 species of waterfowl. In addition, they provide important habitat for fish, shellfish, endangered and threatened species, and other wildlife.

Wetlands also perform other valuable functions: they reduce flooding problems by temporarily storing large quantities of water and slowing the velocity of flood waters; they maintain water quality by filtering out pollutants and sediments; they recharge aquifers; they control erosion by trapping soil washed from nearby farmlands; and they are used widely for recreational purposes.

More than half the wetlands that existed in what are now the lower 48 states have been lost since European colonies were established on the continent more than three centuries ago. From the mid-1950's to the mid-1970's, 9 million acres of wetlands were drained, filled, and cleared in the 48 contiguous states, and the destruction of wetlands continues today at a rate of 450,000 acres annually.

Waterfowl populations, which have been carefully monitored by the U.S. Fish and Wildlife Service (FWS), are declining due to the destruction of wetlands. The average number of North American ducks in recent years has been lower than any comparable period on record. In 1985, there was an estimated breeding population of 30 million ducks in the U.S. and Canada, compared to 62 million ducks in the breeding population 10 years ago. The continued drought in the North American prairies has exacerbated the destruction and degradation of habitat. Mallard and pintail ducks are two species of waterfowl that have suffered the greatest decline in numbers.

Although less is known about the specific habitat needs of migratory non-game birds, it is clear that their populations also suffer from the loss of wetlands. Of the 30 species of migratory non-game birds that are currently of concern to the FWS because of their uncertain status, nearly one half are dependent upon coastal and freshwater wetlands. Among the species whose populations have declined are white ibises (by an estimated 90%), sanderlings (80%), woodstorks (50%), and short-billed dowitchers (40%).

THE NORTH AMERICAN WATERFOWL MANAGEMENT PLAN

The North American Waterfowl Management Plan (the Plan) was signed in 1986 by the U.S. Secretary of the Interior and the Canadian Minister of the Environment. The Plan is a statement of needs, objectives, and strategies designed to protect, restore, and enhance habitat for North American waterfowl. It establishes a goal, which is to be achieved by the year 2000, to restore the continent's waterfowl breeding populations to the levels of a decade ago (62 million ducks). To achieve this, the Plan calls for the protection, restoration, and enhancement of 1.93 million acres of waterfowl habitat in the U.S. and 3.67 million acres in Canada.

The Plan goes beyond land acquisition programs to recommend that "public works projects planning should include the prevention or mitigation of destruction or degradation of waterfowl habitats" and that "public land management agencies should be encouraged to zone or otherwise regulate land uses to prevent the destruction or degradation of waterfowl habitats".

The Plan does not commit the governments of Canada or the United States to undertake any specific actions to achieve the Plan's habitat protection goals. Rather, it calls on public and private organizations in each country to plan, fund, and implement projects to improve waterfowl habitat. These projects would include land acquisition and agreements with private land owners to protect and manage habitat on their properties.

Under the Plan, 75% of the estimated $1 billion needed for acquiring land in Canada is to be raised by public and private interests in the United States. This is because 75% of North America's waterfowl breed in Canadian wetlands, while 75 percent of the annual waterfowl harvest occurs in the United States. A key feature of the Plan is to encourage joint public-private ventures that involve not only the Federal governments of the two countries, but also state, provincial, territorial, and local governments, and private individuals, conservation organizations, and businesses.

The principal waterfowl habitat areas targeted by the Plan for joint ventures are the Central Valley of California; the prairie pothole region of the Great Plains; the lower Mississippi River region; the Gulf Coast; the Atlantic Coast from Maine to South Carolina; the lower Great Lakes-St. Lawrence River basin; portions of five eastern Canadian provinces; and the prairie-parkland provinces of Canada.

IMPLEMENTATION OF THE NORTH AMERICAN WATERFOWL PLAN

In 1987, Congress approved legislation (Public Law 100–240) authorizing up to $5 million annually in Federal matching funds to the National Fish and Wildlife Foundation (a non-profit, charitable organization established by Congress), and allowing these funds to be spent in foreign countries for fish and wildlife conservation purposes.

In fiscal year 1988, the Foundation received an appropriation of $2 million in matching funds to support wetlands protection efforts in Canada. The Foundation matched these funds with $1 million from Ducks Unlimited and $1 million contributed by 11 states (California, Oregon, Colorado, Texas, Oklahoma, Arkansas, Louisi-

ana, Illinois, New Jersey, South Carolina, and New York). This $4 million from U.S. sources was matched by $4 million from Canadian sources, and used to begin the first projects of the Plan.

In fiscal year 1989, the Foundation received another appropriation of $2 million which will be matched with $4 million from Ducks Unlimited and $3 million from individual states. Of this total amount, $6 million will be matched with $2 million from Canadian sources for projects in that country, and $3 million will be used for projects in the U.S. The Foundation allocated another $2 million for matching with state and private entities to carry out Plan projects in the U.S.

In addition, Congress appropriated $6 million fiscal year 1988 and $10 million in fiscal year 1989 from the Land and Water Conservation Fund for the purchase of wetlands in the U.S. which meet the objectives of the Plan.

Legislative Background

H.R. 2587 was introduced on June 8, 1989 by Mr. Conte for himself and Mr. Dingell, Mr. Jones of North Carolina, and Mr. Davis. As introduced, the bill would permanently appropriate an estimated $11 million annually for the acquisition, restoration, and enhancement of wetlands identified as important waterfowl habitat in the Plan. It would also authorize an additional $15 million for that purpose, subject to annual appropriations. Current law already authorizes the expenditures of Federal funds for the acquisition of wetlands identified in the Plan. For example, wetland habitat in the U.S. can be acquired pursuant to the Land and Water Conservation Fund Act, the Emergency Wetlands Resources Act, and the Migratory Bird Conservation Act. Currently, wetland habitat in Canada can be acquired with U.S. Federal funds only pursuant to the National Fish and Wildlife Foundation Act. The land acquisition authority in H.R. 2587 (as introduced) differs from existing land acquisition authority in that (1) it would require that between 50% and 70% of the available Federal funds be spent in Canada or Mexico, and (2) that the funds be matched by state and private organizations which in turn would have a role in deciding where the Federal funds would be spent.

On July 25, 1989, the Subcommittee on Fisheries and Wildlife Conservation and the Environment held a hearing on H.R. 2587 and H.R. 2322, similar legislation introduced by Mr. Davis. Both bills would implement the North American Waterfowl Management Plan. Witnesses included representatives from the Department of the Interior, the International Association of Fish and Wildlife Agencies, the National Wildlife Federation, the Nature Conservancy, and Ducks Unlimited.

Ms. Bach, representing the Department of the Interior, testified in support of the general objectives of the legislation. She noted the strong support of President Bush and Secretary Lujan for the conversion of the Pittman-Robertson Fund into a trust fund, with the interest from that fund being available, without appropriation, to fund Plan projects. She did object to the following: the mandatory requirement that a fixed amount of Federal funds be spent annually in Canada and Mexico for wetland projects; the requirement in

the bill that lands be bought only from willing sellers; the requirement that public access be provided to lands acquired under the bill; and the use of Federal funds for the expenses of members of the advisory committee or commission established under the bill. Mr. Peterson, representing the International Association of Fish and Wildlife Agencies, testified in favor of the creation of a commission reporting to the Secretary of the Interior as provided in H.R. 2322, in lieu of an advisory committee, reporting to the Migratory Bird Conservation Commission as provided in H.R. 2587. Mr. Peterson opposed the use of Federal wildlife law enforcement fines for the Refuge Revenue Sharing Act, called for a date certain (the year 2006) at which the interest on Pittman-Robertson funds would be distributed to the states instead of being dedicated for wetland conservation projects, and supported the proposal that the Fish and Wildlife Service be directed to negotiate agreements with other nations in the western hemisphere to conserve non-game migratory birds. Mr. Smolko, representing Ducks Unlimited, supported the establishment of a commission reporting directly to the Secretary of Interior, as provided in H.R. 2322. He indicated that Ducks Unlimited also supported the use of interest generated on investments of the Pittman-Robertson funds. He pointed out that large-scale alterations of wetland and grassland habitat had been most severe in the prairie pothole region located predominately in Canada. He supported the requirement of a specific minimum threshold of funds to be spent in Canada so a solid long-term conservation program providing the highest amount and best quality of habitat possible could begin. Mr. Massengale, representing The Nature Conservancy, supported the establishment of an advisory committee, as provided in H.R. 2587.

Ms. Goldman-Carter, representing the National Wildlife Federation, expressed concern that the focus on enhancement of wetlands for waterfowl might lead to the destruction of other wetland values and called for a stated priority in the bill for wetland protection and restoration projects over wetland enhancement or managment projects. She proposed that the Fish and Wildlife Service be directed to develop agreements with other nations in the western hemisphere for the conservation of non-game birds. She also noted that substantial wetland losses in important waterfowl habitat areas have resulted from Federal water projects and activities undertaken with Federal permits. She explained that in many such cases, the FWS had recommended steps that could have been taken to avoid such losses. The Service, pursuant to the Fish and Wildlife Coordination Act, identifies the impact such projects and activities will have on wildlife resources and makes recommendations on how the projects can be modified to mitigate the loss. However, Federal agencies haave no legal obligation to accept these recommendations, and often do not incorporate them into their projects or permits. She suggested that one measure that could be taken to decrease the likelihood that wetlands critical to restoring our waterfowl populations are not destroyed would be to require Federal agencies to incorporate the Service's mitigation recommendations into water projects that will affect waterfowl habitat identified in the Plan. This proposal was opposed by the other witnesses, who were concerned that it would threaten an expedited passage of the

bill. While the Committee declined to include such a provision in the legislation, it believes that the concept is a valuable one worthy of further consideration.

Many witnesses noted the value of wetlands identified in the Plan for non-game birds, as well as for waterfowl. The Committee anticipates that steps will be taken to manage lands acquired under this Act in a manner that will benefit non-game birds to the extent that it does not detract from their value for waterfowl. Such management techniques were discussed at the Non-game Bird Management Workshop hosted by the FWS in Minneapolis on August 10, 1988.

Subcommittee Action

The Subcommittee on Fisheries and Wildlife Conservation and the Environment met on September 19, 1989, to consider H.R. 2587. Mr. Davis and Mr. Studds offered an amendment in the nature of a substitute, which was adopted by voice vote. The Subcommittee then ordered H.R. 2587, as amended, reported to the full Merchant Marine and Fisheries Committee by voice vote.

Full Committee Action

The Committee on Merchant Marine and Fisheries met on September 26, 1989, to consider H.R. 2587, as amended by the Subcommittee on Fisheries and Wildlife Conservation and the Environment, and reported it favorably to the House of Representatives by voice vote.

Section-by-Section Analysis

Section 1 designates the bill as the "North American Wetlands Conservation Act."

Section 2 sets forth Congressional findings and the purposes of the legislation. The purposes of the Act are to encourage partnerships among public agencies and private conservation interests (1) to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America; (2) to maintain current or improved distributions of migratory bird populations; and (3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and migratory bird treaties to which the United States is a party.

The Committee notes that the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere calls on the contracting governments to adopt appropriate measures for the protection of migratory birds of economic or aesthetic value or to prevent the threatened extinction of any species. The Committee fully supports the on-going activities of the FWS pursuant to this convention and encourages the Service to expand its efforts in this area.

The Committee also notes that the tripartite agreement signed by the U.S., Mexico, and Canada calls for the following: "Cooperation in the technical training of its human resources; cooperation

in establishing and developing the necessary infrastructure to implement integrated programs of conservation and management of wetlands; cooperation in carrying out studies that permit the definition and formulation of strategies for the rational and sustainable use of resources; and cooperation in implementing alternative productive projects for rural communities compatible with the conservation and management of wetlands and wintering sites."

Section 3 defines the terms "Council", "Commission", "appropriate Committees", "migratory birds", "Plan", "Secretary", "State" and "wetlands conservation project".

"Wetlands Conservation Project" as defined by this section includes the acquisition, restoration, management, or enhancement of wetlands. It is the intent of the Committee that in the acquisition of lands authorized by this legislation, the FWS should continue its present land acquisition policy. Under the policy, the Service uses condemnation proceedings only when necessary to assist in the determination of the legal owner, settle a difference of opinion about value, or prevent uses which would cause irreparable damage to wildlife resources. The Committee expects that lands acquired under this legislation will typically be from willing sellers.

Under this section, "wetland acquisition" includes both the purchase of easements and the purchase of fee title. It is the intent of the Committee that before Federal funds are spent to acquire an interest in a property pursuant to this Act or to restore or enhance wetlands pursuant to this Act, the Migratory Bird Conservation Commission must receive assurances that the property will be administered for the long-term conservation of the wildlife dependent thereon. It is the Committee's preference that the lands be protected in perpetuity. In cases where an agreement cannot be reached to protect the land in perpetuity, the land should be protected for as long a period as possible.

It is the intent of the Committee that there be public access to lands acquired in fee in whole or in part with Federal funds to the extent that access is appropriate and compatible with the purposes for which the land was acquired. The Committee recognizes that in some cases, habitat and migratory bird conservation needs may preclude public access. When access is provided to land acquired in fee using Federal funds, it should not be discriminatory based on membership to a club or otherwise. However, limitations on the number of people permitted access or the time of year at which access is permitted may be appropriate. If fees are charged for access to lands purchased in whole or in part with Federal funds, fees in excess of those necessary to manage the property for the benefit of wildlife should be returned to the Federal government or used for wetland conservation projects.

The term "restoration" as used in the definition of "wetlands conservation project" refers to the rehabilitation of a naturally occurring but degraded wetland ecosystem. For example the removal of a drainage tile or elimination of a pollution source might serve to restore a degraded wetlands. The term "enhancement" refers to the modification of a wetland ecosystem to improve its habitat value. It is the intent of the Committee that the majority of the projects undertaken pursuant to this Act be designed to acquire existing wetlands and restore previously degraded wetlands rather

than to enhance and manage existing wetland ecosystems. In particular, it is not the intent of the Committee that Federal funds be used to create fresh water impoundments from naturally occurring saltwater estuaries if it will result in the degradation of fisheries resources. Furthermore, it is not the intent of this legislation to override any Federal or state requirements or constraints related to the alteration of wetlands.

The Committee notes that the tripartite agreement with Mexico does not call for land acquisition, but rather for technical assistance. Therefore the Committee has ensured that the definition of "wetlands conservation project" includes the types of activities called for in the tripartite agreement. It is the intent of the Committee that funding for these projects will supplement, and not substitute for, activities currently underway.

Section 4 establishes a ten-member North American Wetlands Conservation Council and directs it to recommend wetlands conservation projects to the Migratory Bird Conservation Commission. Ongoing wetland acquisition programs under the Migratory Bird Conservation Fund, Land and Water Conservation Fund, or other laws would not be subject to this process or otherwise be affected by the Act.

The Council consists of the six members of the United States section of the North American Waterfowl Management Plan Committee as called for in the Plan, the Executive Director of the National Fish and Wildlife Foundation, and three individuals appointed by the Secretary. These three must represent different charitable, non-profit organizations which are actively participating in implementation of the Plan. It is the intent of the Committee that the term "actively particpating" means those non-profit organizations which are contributing to wetlands conservation projects undertaken to meet the goals of the North American Waterfowl Management Plan or are substantially involved in the various joint ventures.

The Committee deleted the subsection in H.R. 2587, as introduced, that would have provided reimbursement of expenses of members of the Council. The Committee believes that payment of the travel expenses of the non-Federal members of the Council by their parent organizations is consistent with shared financial arrangements that form the basis of this legislation. The Committee also notes that the provisions of the Federal Advisory Committee Act will not apply to the operations of the Council since the Migratory Bird Conservation Commission which it advises is not considered a "Federal Agency" for purposes of that Act.

Section 5 establishes a procedure under which Federal funds are provided for wetlands conservation projects designed to meet the goals of the Plan. In keeping with the historic role of the Migratory Bird Conservation Commission regarding the preservation of migratory bird habitat, the Council's recommendations on funding of wetlands conservation projects are to be made to the Commission, and are to be based on (1) the extent to which any project fulfills the purposes of the Act and the goals of the Plan; (2) the availability of sufficient non-Federal money; (3) the extent to which any project represents a public-private partnership; (4) the consistency of any project in the United States with the National Wetlands Pri-

ority Conservation Plan developed under the Emergency Wetlands Resources Act; (5) the extent to which any project would aid the conservation of migratory non-game birds, other fish and wildlife and species that are listed, or are candidates to be listed, as threatened or endangered under the Endangered Species Act; (6) the recommendations of any partnerships among public agencies and private entities in Canada, Mexico, or the United States, which are participating actively in carrying out any projects under the Act or the Plan; and (7) the substantiality of the character and design of any project. Given the wide variety of potential wetland conservation projects, the Committee recognizes that the manner in which these projects address the above criteria will vary from project to project. No single criterion is intended to be weighed more heavily than another with the obvious exception of the availability of sufficient non-Federal money.

The Commission along with two members of the Council shall review the wetlands conservation projects recommended by the Council. If the Commission rejects any of the projects, the Commission is required to provide the Council and Congress with a written justification.

It is the Committee's intent that when the Council considers the extent to which a project would benefit the conservation of other fish and wildlife, that it should give special consideration to the habitat needs of fishery management plans established under the Magnuson Fishery Conservation and Management Act and those species managed by the Gulf, Pacific, and Atlantic States Marine Fisheries Commissions. Examples of coastal and anadromous fisheries that will benefit from this consideration include salmon, shrimp, and striped bass.

The Committee notes the importance of public education on the value of wetlands, and intends that the educational value of proposed projects be considered by the Council in making its recommendations.

Section 6 authorizes the Secretary of the Interior to match Federally-appropriated funds with non-Federal funds for wetland conservation projects (acquisition, management, enhancement, or restoration of lands and waters administered for long-term conservation) in Canada, Mexico, and the United States.

The section also authorizes the Secretary to convey, without cost, property acquired under this Act, to a State or to another public agency or other entity. "Other entity" as used in this section, and throughout this legislation includes, but is not limited to Indian tribes and non-profit charitable organizations.

The section also provides that any lands and waters acquired in the United States with Federal funds shall be included in the National Wildlife Refuge System unless the Commission believes they can be better managed by another entity. Any lands and waters acquired with Federal funds and conveyed to a state or other entity for their management shall be subject to terms and conditions ensuring long-term conservation and management of fish and wildlife.

The Secretary may provide Federal funds to public agencies in Canada or Mexico or to other entities to assist in carrying out approved wetlands conservation projects. Acquisition of any non-

United States lands or waters with Federal funds made available under this Act shall not be subject to any provisions of Federal law and shall not be included in the National Wildlife Refuge System.

Section 7 authorizes the expenditure of funds under this Act. Funds to carry out wetlands conservation projects are provided as follows:

1. The interest earned through short-term investment of any Federal excise tax revenues in the Pittman-Robertson Fund that are not needed to meet a current year's withdrawals would be available to the Secretary under the Act—about $11 million annually. The Pittman-Robertson Fund is generated from taxes on sporting arms and ammunition and is distributed to the states for wildlife conservation. None of the Fund's excise tax revenues (the Fund's capital) would be allowed to be used by the Secretary. Thus, the Act would have no effect on the amount of the Fund apportioned to any state or territory. The interest earned each year from short-term investments would become available for apportionment to the states at the beginning of fiscal year 2006.

2. In addition to the amounts above, the Act authorizes the appropriation of $15 million annually to the Department of the Interior to carry out wetlands conservation projects.

It is the intent of the Committee that the funds appropriated under this section should be in addition to current land acquisition funding levels, and should not be in lieu of funds that would otherwise have been appropriated for land acquisition. The Committee agrees with the testimony received from the International Association of Fish and Wildlife Agencies that to do othewise would be counterproductive to current wetlands habitat protection efforts. Further, it is the intent of the Committee that the portion of the Pittman-Robertson Fund referred to in section 7(b)(1) shall be made available to the states for apportionment pursuant to the Pittman-Robertson Act beginning in the year 2006, without further Congressional action.

Section 8 sets forth the requirements for non-Federal contributions for projects funded under this Act, and requires that a certain amount be spent outside of the United States.

It is the general goal of the Committee that 50% of the funds made available under this Act each year be spent on approved wetlands conservation projects in Canada or Mexico. However, in order to ensure sufficient flexibility to take advantage of the most important wetlands conservation opportunities available in a given year, regardless of their location, the Committee believes that it is acceptable to require that at a minimum of 40% of the funds be spent in Canada in any given year, while over a five-period an average of at least 50% of the funds be spent in Canada. Those are the percentages set forth in this section.

Up to 4 percent of the funds available each year for distribution to wetlands conservation projects may be used for administering the Act. The Federal money for projects in Canada or Mexico must be matched by at least 50 percent non-Federal money. The non-Federal share may not be derived from Federal grant programs.

The remainder of Federal funds available must be allocated by the Commission to carry out approved wetlands conservation

projects in the United States. The Federal money to carry out approved wetlands conservation projects in the United States also must be matched by at least 50 percent non-Federal money. The exception to this rule is that the Federal share may be 100 percent if the project is conducted solely on Federal lands and waters or involves the acquisition of inholdings within such lands and waters. The non-Federal share may not be derived from Federal grant programs.

Section 9 provides that all criminal or civil penalities or fines, as well as proceeds from all forfeiture and subsequent disposal or seized property, resulting from FWS law enforcement activities, are to be deposited into the Refuge Revenue Sharing Fund. This requirement would not apply, however, where Congress has otherwise specifically earmarked the use of such fines, penalities, or proceeds or where the FWS must recover administrative costs associated with the storage and disposal of forfeited property.

Section 10 provides that each Federal agency responsible for acquiring, managing, or disposing of Federal lands and waters must, consistent with the agency's mission, cooperate with the Director of the FWS to restore, protect, and enhance the wetland ecosystems and other waterfowl and migratory bird habitats within its lands and waters. When considering land disposal alternatives involving wetlands and migratory bird habitat, Federal agencies would be required to give priority to transfers of real property interests for conservation purposes in support of this Act and the goals of the North American Waterfowl Management Plan and the tripartite agreement with Mexico on waterfowl conservation.

Section 11 requires the Secretary of the Interior to provide Congress every two years with an assessment of the following:

(1) the estimated number of acres of wetlands and habitat for waterfowl and other migratory birds that were restored, protected or enhanced during the preceding two-year period by Federal, state, and local agencies and private entities in the United States, Canada, and Mexico;

(2) trends in the population size and distribution of North American migratory birds; and

(3) the status of the effort to establish agreements with nations in the western hemisphere concerning protection of migratory non-game birds.

The Secretary is also required to report annually to Congress concerning the status of wetlands conservation projects, including an accounting of Federal, state, and other United States expenditures and expenditures by Canadian and Mexican sources to carry out these projects.

Section 12 requires the Secretary of the Interior to undertake with the appropriate officials in Canada to revise the goals and other elements of the Plan in 1991 and every 5 years thereafter. The revision is to be in accordance with the information required in section 11 and with the other provisions of the Act. The Secretary is directed to invite appropriate officials from Mexico to participate in revising the Plan.

Section 13 provides that nothing in this Act affects the Secretary's authority to acquire lands under the Land and Water Conservation Fund Act, the Emergency Wetlands Resources Act, the

Migratory Bird Conservation Act, or other wildlife conservation statutes.

Section 14 changes the composition of the Migratory Bird Conservation Commission by removing the Secretary of Transportation and adding the Administrator of the Environmental Protection Agency. The Secretary of Transportation was originally included because of concerns about the impact of the interstate highway system on wetlands. Since the system is built, there is no longer a need for the Secretary of Transportation's participation. The Environmental Protection Agency has been added because of the central role it plays in wetland conservation.

Section 15 limits assessments against the Migratory Bird Conservation Fund. Under this section only personnel and administrative costs directly related to the acquisition of property shall be levied against the Migratory Bird Conservation Account. This provision is intended to stop the past practice of the Department of the Interior of assessing against the Migratory Bird Conservation Fund a number of overhead charges already assessed against the FWS's Division of Realty. This resulted in what amounted to a double assessment against the Realty Division which processes acquisitions under the Migratory Bird Conservation Fund. The remainder of the Ducks Stamp revenues are to be used for land acquisition. It is estimated that this provision will make available an additional $1 million annually for land acquisition.

Section 16 makes a technical amendment to the Migratory Bird Treaty Act by adding the 1976 Convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds to the list of migratory bird treaties implemented by the Act.

Section 17 requires the Secretary to establish agreements—modeled after the North American Waterfowl Management Plan or the Tripartite Agreement—with other nations in the western hemisphere for the protection and conservation of migratory non-game birds (those that are not typically hunted). The Secretary is also required to provide recommendations for legislation to implement the agreements.

Steps are already being taken internationally to protect important non-game bird habitat. Migratory shorebirds depend upon habitats spaced along a chain of traditional breeding, stopover and wintering sites. These migrants concentrate in great numbers in a few essential locations along these pathways. Because large percentages of entire populations often congregate at a single place, they are at risk from environmental threats to these critical habitats. The Western Hemisphere Shorebird Reserve Network (WHSRN), made up of public and private organizations that are committed to shorebird conservation, gives international recognition and promotes cooperative management and protection of these important shorebird habitats.

The Committee recognizes that many populations of non-game birds that winter in South America and breed in North America are declining. Efforts by the United States to establish agreements designed to foster non-game bird conservation, modeled after the Plan or the Tripartite Agreement, can provide significant opportunities for public and private groups, such as WHSRN, to work to-

gether to provide for the long-term protection of species of non-game birds.

Compliance With Clause 7, Rule XIII

In accordance with paragraph (d) of this clause, the provisions of this clause do not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office has been included in the report.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2587 would not have a significant inflationary impact on the nation's economy.

Compliance With Clause 2(l)(3) of Rule XI

Pursuant to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment held a legislative hearing on H.R. 2587 on July 25, 1989.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Merchant Marine and Fisheries has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with the following estimate and comparison of cost of H.R. 2587 pursuant to section 403 of the Congressional Budget Act of 1974:

Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 3, 1989.

Hon. Walter B. Jones,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2587, North American Wetlands Conservation Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2587.
2. Bill title: North American Wetlands Conservation Act.

3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries on September 26, 1989.

4. Bill purpose: H.R. 2587 would establish a ten-member council to recommend wetlands conservation projects to the Migratory Bird Conservation Commission. The Secretary of the Interior, acting through the U.S. Fish and Wildlife Service (USFWS), would be directed to finance those projects approved by the commission with funds made available under Section 7 of the bill.

Section 7 would amend the Act of September 2, 1937 (commonly referred to as the "Pittman-Robertson Act") to require the investment of balances in the Federal Aid in Wildlife Restoration Fund that are not needed for given year's withdrawals. Interest earnings from the investments would be credited to that fund but would be available to the Secretary (until fiscal year 2006) for wetlands conservation programs authorized under this bill. Beginning in fiscal year 2006, the interest would be available for the Federal Aid in Wildlife Restoration program. This section would also authorize the appropriation of $15 million for each of fiscal years 1990–1993 from the general fund of the U.S. Treasury.

Under Section 8 of the bill, between 40 percent and 70 percent of all amounts available to the Secretary in each year from the above sources (less up to 4 percent for administrative expenses) would be used to support approved conservation projeets in Canada and Mexico. The balance would be used for domestic projects.

Section 9 of the bill would require that all fines, penalties, and sales of forfeitures derived from USFWS enforcement actions (less certain amounts that are already earmarked for other purposes) be deposited into the National Wildlife Refuge Fund. Upon deposit, these amounts would be available without appropriation for payments to counties under the Refuge Revenue Sharing Act.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Direct Spending Effects					
Wetlands conservation projects:					
Estimated budget authority		6	7	8	8
Estimated outlays		4	7	8	8
Refuge revenue sharing payments:					
Estimated budget authority	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Total direct spending:					
Estimated budget authority	1	7	8	9	9
Estimated outlays	1	5	8	9	9
Authorizations					
Wetlands conservation:					
Authorization level	15	15	15	15	
Estimated outlays	11	15	15	15	4

The costs of this bill fall within budget functions 300 and 800.

Basis of estimate: For purposes of this estimate, it is assumed that H.R. 2587 will be enacted by December 1, 1989, and that the entire amounts authorized will be appropriated for each fiscal year.

The authorization levels shown in the table are those stated in Section 7. In addition, beginning in fiscal year 1991, the table shows new direct spending that would result from using interest earned on invested Pittman-Robertson funds. CBO has assumed that interest income would become available to the USFWS without appropriation action in the year after it is earned. (Interest earned by the fund would be exactly offset by increased interest payments on the public debt. While such intragovernmental transfers would have no net impact on the federal budget, the subsequent use of the amounts earned would result in new federal outlays from direct spending.)

Finally, the table shows new direct spending resulting from the deposit of fines and other enforcement action proceeds into the National Wildlife Refuge Fund. Based on information obtained from the USFWS, CBO estimates that new deposits into the fund would be about $1 million a year.

Outlays for conservation programs and revenue sharing payments have been estimated on the basis of historical spending for similar activities.

7. Estimate comparison: None.

8. Previous CBO estimate: On October 2, 1989, CBO prepared a cost estimate for S. 804, the North American Wetlands Conservation Act, as ordered reported by the Senate Committee on Environment and Public Works. The estimated costs of the two bills differ because H.R. 2587 would provide more direct spending authority by requiring the proceeds of USFWS enforcement actions to be deposited into the National Wildlife Refuge Fund.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

Departmental Reports

There were no departmental reports received in regard to H.R. 2587.

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, charges in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

16 U.S.C. 669b

§ 669b. Authorization of appropriations; disposition of unexpended funds

(*a*) An amount equal to all revenues accruing each fiscal year (beginning with the fiscal year 1975) from any tax imposed on specified articles by sections 4161(b) and 4181 of Title 26, shall, subject to the exemptions in section 4182 of such Title, be covered into the Federal aid to wildlife restoration fund in the Treasury (hereinafter referred to as the "fund") and is authorized to be appropri-

ated and made available until expended to carry out the purposes of this chapter. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this chapter which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act [16 U.S.C. § 715 et seq.].

(b)(1) The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the fund as is not, in the Secretary's judgment, required for meeting a current year's withdrawals. For purposes of such investment, the Secretary of the Treasury may—

(A) acquire obligations at the issue price and purchase outstanding obligations at the market price; and

(B) sell obligations held in the fund at the market price.

(2) The interest on obligations held in the fund—

(A) shall be credited to the fund;

(B) constitute the sums available for allocation by the Secretary under section 8 of the North American Wetlands Conservation Act; and

(C) shall become available for apportionment under this Act at the beginning of Fiscal Year 2006.

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16 U.S.C. 669c(a)

§ 669c. Apportionment of funds; expenses of Secretary

(a) So much, not to exceed 8 per centum, of the revenues *(excluding interest accruing under section 3(b))* covered into said fund in each fiscal year as the Secretary of the Interior may estimate to be necessary for his expenses in the administration and execution of this chapter and the Migratory Bird Conservation Act [16 U.S.C.A. § 715 et seq.] shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year, and within sixty days after the close of such fiscal year the Secretary of the Interior shall apportion such part thereof as remains unexpended by him, if any, and make certificate thereof to the Secretary of the Treasury and to the State fish and game departments on the same basis and in the same manner as is provided as to other amounts authorized by this chapter to be apportioned among the States for such current fiscal year. The Secretary of the Interior, after making the aforesaid deduction, shall apportion, except as provided in subsection (b) of this section, the remainder of the revenue in said fund for each fiscal year among the several States in the following manner: One-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments,

bears to the total number of paid hunting-license holders of all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned. The term fiscal year as used in this chapter shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of paid hunting-license holders shall be a State's fiscal or license year.

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16 U.S.C. 703

§ 703. Taking, killing, or possessing migratory birds unlawful

Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, [and] the United States and the government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 *and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.*

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16 U.S.C. 715a

§ 715a. Migratory Bird Conservation Commission; creation; composition; duties; approval of areas of land and water recommended for purchase or rental

A commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of the Interior, as chairman, [the Secretary of Transportation,] *the Administrator of the Environmental Protection Agency,* the Secretary of Agriculture and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of the Interior for purchase or rental under this subchapter, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. Any Member of

the House of Representatives who is a member of the commission, if reelected to the succeeding Congress, may serve on the commission notwithstanding the expiration of a Congress. Any vacancy on the commission shall be filled in the same manner as the original appointment. The ranking officer of the branch or department of a State to which is committed the administration of its game laws, or his authorized representative, and in a State having no such branch or department, the governor thereof, or his authorized representative, shall be a member ex officio of said commission for the purpose of considering and voting on all questions relating to the acquisition, under this subchapter, of areas in his State. For purposes of this subchapter, the purchase or rental of any area of land, water, or land and water includes the purchase or rental of any interest in any such area of land, water, or land and water.

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16 U.S.C. 2912(a)

§ 2912. Federal conservation of migratory nongame birds

(a) CONSERVATION ACTIVITIES.—The Secretary shall undertake the following research and conservation activities, in coordination with other Federal, State, international and private organizations, to assist in fulfilling his responsibilities to conserve migratory nongame birds under existing authorities provided by the Migratory Bird Treaty Act and Migratory Bird Conservation Act (16 U.S.C. 701–715) and section 8A(e) of the Endangered Species Conservation Act (16 U.S.C. 1537A(e)) implementing the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere:

(1) monitor and assess population trends and status of species, subspecies, and populations of all migratory nongame birds;

(2) identify the effects of environmental changes and human activities on species, subspecies, and populations of all migratory nongame birds;

(3) identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543); [and]

(4) identify conservation actions to assure that species, subspecies, and populations of migratory nongame birds identified under paragraph (3) do not reach the point at which the measures provided pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543) become [necessary.] *necessary; and*

(5) identify lands and waters in the United States and other nations in the western hemisphere whose protection, management or acquisition will foster the conservation of species, subspecies and populations of migratory non-game birds, including those identified in paragraph (3).

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